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# REPORT

on new developments in public procurement  
(2009/2175(INI))

Committee on the Internal Market and Consumer Protection

Rapporteur: Heide Rühle

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on new developments in public procurement (2009/2175(INI))

*The European Parliament,*

- having regard to the Treaty establishing the European Community, with particular reference to the changes introduced by the Lisbon Treaty,
- having regard to Directives 2004/18/EC and 2004/17/EC on procedures for the award of public contracts and Directive 2007/66/EC on review procedures concerning the award of public contracts,
- having regard to the Commission communication of 19 November 2009 entitled ‘Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships’ (COM(2009)0615),
- having regard to the Commission communication of 5 May 2009 entitled ‘Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes’ (COM(2009)0215),
- having regard to the Commission communication of 16 July 2008 entitled ‘Public procurement for a better environment’ (COM(2008)0400),
- having regard to the Commission interpretative communication of 5 February 2008 on the application of Community law on Public Procurement and Concessions to Institutionalised Public-Private Partnerships (IPPP) (C(2007)6661),
- having regard to the Commission staff working document entitled ‘European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts’ (SEC(2008)2193),
- having regard to the Commission interpretative communication of 1 August 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives<sup>1</sup>,
- having regard to the following judgments of the Court of Justice of the European Union (CJEU):
  - of 19 April 2007 in Case C-295/05 (Tragsa),
  - of 18 December 2007 in Case C-532/03, *Commission v Ireland* (Irish rescue services),
  - of 13 November 2008 in Case C-324/07 (Coditel Brabant),
  - of 9 June 2009 in Case C-480/06, *Commission v Germany* (Stadtwerke Hamburg),

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<sup>1</sup> OJ C 179, 1.8.2006, p. 2.

- of 10 September 2009 in Case C-206/08 (Eurawasser),
  - of 9 October 2009 in Case C-573/07 (Sea s.r.l.),
  - of 15 October 2009 in Case C-196/08 (Acoset),
  - of 15 October 2009 in Case C-275/08, *Commission v Germany* (Datenzentrale Baden-Württemberg),
  - of 25 March 2010 in Case C-451/08 (Helmut Müller),
  - having regard to the opinion of the Committee of the Regions of 10 February 2010 on ‘Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes’ (RELEX-IV-026),
  - having regard to the following studies:
    - ‘Evaluation of Public Procurement Directives: Markt/2004/10/D Final Report’, Europe Economics, 15 September 2006,
    - ‘The Institutional Impacts of EU Legislation on Local and Regional Governments: A Case Study of the 1999/31/EC Landfill Waste and 2004/18/EC Public Procurement Directives’, European Institute of Public Administration (EIPA), September 2009,
  - having regard to its resolution of 3 February 2009 on pre-commercial procurement: driving innovation to secure sustainable high-quality public services in Europe<sup>1</sup>,
  - having regard to its resolution of 20 June 2007 on specific problems in the transposition and implementation of public procurement legislation and its relation to the Lisbon Agenda<sup>2</sup>,
  - having regard to its resolution of 26 October 2006 on public-private partnerships and Community law on public procurement and concessions<sup>3</sup>,
  - having regard to its resolution of 6 July 2006 on Fair Trade and development<sup>4</sup>
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on International Trade and the Committee on Regional Development (A7-0151/2010),
- A. whereas the economic and financial market crisis has highlighted the vital economic importance of public procurement, whereas the effects of the crisis on local authorities are already clearly evident, and whereas at the same time public authorities can perform their tasks properly in the public interest only if they can count on the requisite legal certainty in this area and if procurement procedures are not too complex,
- B. whereas a well-functioning procurement market is essential for the internal market, in

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<sup>1</sup> OJ C 067E, 18.3.2010, p. 10.

<sup>2</sup> OJ C 146E, 12.6.2008, p. 227.

<sup>3</sup> OJ C 313E, 20.12.2006, p. 447.

<sup>4</sup> Texts adopted, P6\_TA(2006)0320.

- order to encourage cross-border competition, stimulate innovation, promote a low-carbon economy and achieve optimal value for public authorities,
- C. whereas public procurement law serves to ensure that public funds are managed soundly and efficiently and to give interested companies the opportunity to be awarded public contracts in a context of fair competition,
  - D. whereas the 2004 revision of the public procurement directives was intended to simplify and modernise the relevant procedures, make them more flexible and establish greater legal certainty,
  - E. whereas the Lisbon Treaty has incorporated into European Union primary law the first acknowledgement of the right to regional and local self-government, consolidated the concept of subsidiarity and granted both the national parliaments and the Committee of the Regions the right to bring actions before the CJEU,
  - F. whereas the European Court of Justice has examined a disproportionate number of infringement cases in this area, indicating that many Member States have struggled to comply with the public procurement directives,
  - G. whereas, with a view to ensuring that European policies develop in such a way as to meet the aspirations of Europe's citizens, the Treaty on the Functioning of the European Union incorporates the notion of a social market economy, a social clause and a protocol on services of general interest defining the shared values of the Union,
  - H. whereas ILO Convention 94 stipulates that general public contracts shall contain clauses ensuring equitable remuneration, and labour conditions which are not less favourable than those laid down in collective agreements, for example,

#### ***General remarks and recommendations***

1. Deplores the fact that the aims of the 2004 revision of the public procurement directives have not yet been achieved, particularly with regard to the simplification of procurement rules and the creation of more legal certainty; expresses the hope, however, that the most recent judgments handed down by the CJEU will help to resolve the outstanding legal issues and that the number of appeal procedures will fall; calls on the Commission to have regard to, and actively to pursue, the aims of simplifying and streamlining the public procurement procedure in any review of the European rules;
2. Further deplores the fact that the existing regulations – in combination with incomplete implementation measures at national and regional level, the plethora of soft law proposals put forward by the Commission, and the interpretation of the relevant legal provisions by European and national courts – have given rise to a complicated and confusing set of rules which is creating, in particular for public bodies, private undertakings and providers of services of general interest, serious legal problems that can no longer be overcome without incurring substantial administrative costs or seeking external legal advice; urges the Commission to remedy this situation and, as part of the

- ‘Better Lawmaking’ initiative, to examine the impact of soft law proposals, to restrict such proposals to key aspects and to assess them in the light of the principles of subsidiarity and proportionality, taking into account the five principles set out in the 2001 White Paper on European Governance (openness, participation, accountability, effectiveness and coherence);
3. Points out that as a result of this development public procurers often have to prioritise legal certainty above policy needs and, given the pressure on public budgets, frequently have to award the contract or service in question to the cheapest offer rather than the most economically advantageous tender; is afraid that this will weaken the EU’s innovative base and global competitiveness; urges the Commission to remedy this situation and to develop strategic measures to encourage and empower public procurers to award contracts to the most economical, highest-quality offers;
  4. Emphasises that European initiatives in the area of public procurement must be coordinated more effectively in order to avoid jeopardising consistency with the public procurement directives or creating legal problems for those applying the rules; calls, therefore, for compulsory coordination measures within the Commission, under the lead of the Internal Market and Services Directorate-General, which is in charge of public procurement, and with the participation of the other relevant Directorates-General; calls for a uniform internet presence and regular information for the contracting authorities, with a view to making the relevant legal provisions more transparent and user-friendly;
  5. Criticises the lack of transparency with regard to the composition and work of the Commission’s internal advisory committee on public procurement (ACPP) and the role and competencies of the Advisory Committee on the Opening-Up of Public Procurement (CCO), and calls on the Commission to take steps to ensure that the composition of both this committee and the planned new advisory committee on public-private partnerships is balanced, including trade unionists and representatives of the business community, in particular SMEs, and that they work in a transparent manner; demands that the European Parliament be kept properly informed and receive all the available information at every stage and at the end of the process;
  6. Takes the view that, since public contracts concern public funds, they should be transparent and open to public scrutiny; asks the Commission for clarification with a view to ensuring legal certainty for local and other public authorities and enabling them to inform citizens of their contractual obligations;
  7. Stresses that public contracts must be awarded under transparent conditions whereby all interested parties are treated equally and the relationship between price and project performance is the ultimate criterion, so that they go to the best tender and not merely the cheapest tender;
  8. Calls on the Commission to carry out an ex-post assessment of the public procurement directives, taking account of the opinions expressed in this report; expects that review to be carried out with the full involvement of all stakeholders and in close cooperation with the European Parliament; advocates that any revision take account of the whole framework and encompass the directive on review procedures concerning the award of

public contracts as well as an analysis of the national laws transposing the directive on review procedures, in order to prevent any further fragmentation of public procurement law; takes the view that the practical impact of that directive cannot yet be assessed, as it has not been transposed in all the Member States;

### ***Public-public cooperation***

9. Points out that the Lisbon Treaty, which came into force on 1 December 2009, incorporates an acknowledgement of the right to regional and local self-government into European Union primary law for the first time (Article 4(2) of the Treaty on European Union); emphasises that in several judgments the CJEU has invoked the right to local self-government and made it clear that the ‘possibility for public authorities to use their own resources to perform the public-interest tasks conferred on them may be exercised in cooperation with other public authorities’ (judgment in Case C-324/07); draws attention, further, to the CJEU Grand Chamber judgment of 9 June 2009 in Case C-480/06, which found, further, that Community law does not require public authorities to use any particular legal form in order to carry out their public service tasks on a joint basis; accordingly, regards public-public partnerships, such as cooperation agreements between local authorities and forms of national cooperation, as falling outside the scope of the public procurement directives, provided that the following criteria are all met:
  - the purpose of the partnership is the provision of a public-service task conferred on all the local authorities concerned,
  - the task is carried out solely by the public authorities concerned, i.e. without the involvement of private individuals or undertakings, and
  - the activity involved is essentially performed on behalf of the public authorities concerned;
10. Points out that the Commission has clarified that not every action taken by public authorities is subject to procurement law, and that as long as European law provisions do not require the creation of a market in a certain area, it remains up to the Member States to decide whether and to what extent they want to perform public functions themselves;
11. Points out that the CJEU’s conclusions in the aforementioned judgment not only apply directly to cooperation between local authorities but are generally valid, with the result that they can be applied to cooperation between other public contracting authorities;
12. Points out that, in its judgment of 10 September 2009 in Case C-573/07, the CJEU found that the mere possibility of opening up the capital of a previously publicly-owned company to private investors may not be taken into consideration as a factor making competitive tendering a requirement unless the character of the public capital company changes during the period for which the contract is valid, thereby altering the fundamental conditions of the contract and necessitating a new competitive tender; notes that there have been major developments in relation to the rules in the area of public-public cooperation as a result of the CJEU’s case-law, and welcomes the recent

judgements handed down by the Court in this area; calls, therefore, on the Commission and the Member States to make information about the legal implications of these judgments widely available;

#### ***Service concessions***

13. Points out that service concessions within the meaning of Article 1(3)(b) of Directive 2004/17/EC and Article 4 of Directive 2004/18/EC are contracts in connection with which ‘the consideration for the provision of services consists either solely in the right to exploit the work or in this right together with payment’; emphasises that service concessions were excluded from the scope of the public procurement directives in order to offer contracting authorities and contractors a greater degree of flexibility; points out that in several judgments the CJEU has confirmed that service concessions are not covered by those directives, but rather by the general principles laid down in the Treaty on the Functioning of the European Union (ban on discrimination, principle of equal treatment and transparency), and that it must remain open to public contracting authorities to ensure the provision of services by way of a concession if they consider that to be the best method of providing the public service in question, even if the risk associated with such an operation is limited, but this limited risk is transferred in full to the concession-holder (judgment in Case C-206/08 of 10 September 2009, points 72-75);
14. Notes the Commission communication of 19 November 2009 on the development of public-private partnerships and awaits the relevant impact assessment with great interest; expects the Commission to draw lessons from failing PPPs; emphasises that due account must be taken of both the complexity of the procedures and the differences between the Member States in terms of legal culture and practice with regard to service concessions; takes the view that the process of defining the term ‘service concession’ and establishing the legal framework governing such concessions has evolved as a result of the 2004 public procurement directives and the CJEU’s supplementary case-law; insists that any proposal for a legal act dealing with service concessions would be justified only with a view to remedying distortions in the functioning of the internal market; points out that such distortions have not hitherto been identified, and that a legal act on service concessions is therefore unnecessary as long as it is not geared to an identifiable improvement in the functioning of the internal market;

#### ***Public-private partnership***

15. Welcomes the legal clarification of the conditions under which procurement law applies to institutionalised public-private partnerships, particularly given the great importance that the Commission, in its communication of 19 November 2009, attaches to such partnerships in connection with combating climate change and promoting renewable forms of energy and sustainable transport; points out that the public procurement directives always apply if a task is to be conferred on an undertaking which is privately owned, even to a very small extent; emphasises, however, that both the Commission, in its communication of 5 February 2008, and the CJEU, in its judgment of 15 October 2009 in Case C-196/08, have made it clear that a double competitive tendering procedure is not required in connection with the award of contracts to, or the



conferral of certain tasks on, newly-established public-private partnerships, but that all the following criteria must be met before a concession can be awarded without competitive tendering to a mixed public-private undertaking specially established for that purpose:

- the private partner must be selected by means of a transparent procedure, with the contract published in advance following a review of the financial, technical, operational and administrative requirements and the characteristics of the tender in the light of the particular service to be provided;

the mixed public-private undertaking must retain the same corporate purpose throughout the duration of the concession. According to the CJEU, any material change to that corporate purpose or to the task to be performed would necessitate the launching of a new competitive tendering procedure;

takes the view, therefore, that the matter of the application of procurement law to institutionalised public-private partnerships has been settled, and calls on the Commission and the Member States to issue statements to that effect;

16. Emphasises, however, that the recent financial crisis has shed new light on the ways in which public-private partnerships are often financed and the financial risks shared; asks the Commission to evaluate properly the financial risks associated with the creation of PPPs;

#### ***Town planning/urban development***

17. Welcomes the CJEU judgment in Case C-451/08; takes the view that the directive's broad and ambitious aims must be borne in mind when interpreting it, but that it should not be assumed that its scope can be extended indefinitely by appealing to the purpose of the measure, since otherwise there would be a danger that all town planning activities would be subject to the directive, given that, by definition, provisions on the possible execution of building works substantially alter the value of the land in question; takes the view that in the last few years procurement law has permeated areas which are not inherently classified under public purchasing, and suggests, therefore, that the criterion of purchasing be emphasised still more strongly in the application of the rules of procurement law;

#### ***Procurement below the threshold***

18. Points out that the European Parliament is a party to the Germany v. Commission case brought before the CJEU on 14 September 2006 against the Commission's interpretative communication of 1 August 2006 on the Community law applicable to contract awards not or not fully subject to the provisions of the public procurement directives, and expects a prompt ruling;

#### ***Micro, small and medium-sized enterprises***

19. Asks the Commission to evaluate the impact of the public procurement directives on micro, small and medium-sized enterprises, especially in their role as sub-contractors,

and to assess , with a view to a future review of the directives, whether we need further rules on the award of sub-contracts, specifically to avoid SMEs as subcontractors being subject to worse conditions than the main contractor awarded the public contract;

20. Calls on the Commission to simplify public procurement procedures in order to relieve both local governments and companies from spending a large amount of time and money on purely bureaucratic matters; emphasises that simplifying the procedures will facilitate SMEs' access to such contracts and enable them to participate on a more equal and fairer footing;
21. Takes the view that sub-contracting is a form of organisation of labour suited to the specialised aspects of the execution of works; emphasises that sub-contracting contracts must comply with all the obligations imposed on the main contractors, especially as regards labour law and safety; takes the view that, to this end, it would be advisable to establish a link between contractor and sub-contractor in terms of responsibility;
22. Supports the systematic admission of alternative bids (or variants); points out that tender conditions, in particular the admission of alternative bids, are crucial for promoting and disseminating innovative solutions; stresses that specifications referring to performance and functional requirements and the express admission of variants give tenderers the opportunity to propose innovative solutions;
23. Encourages the creation of a single web access portal for all information relating to public contracts, as an upstream network for all calls for tenders; notes that the aim should be to provide training and information, to direct undertakings towards contracts and to explain the applicable legislation, in particular for SMEs (which do not generally have extensive human and administrative resources with expertise in procurement-related terminology and procedures), and that specialist helpdesks could also assist them in evaluating whether they genuinely fulfil the conditions of the tender, and if so in completing their bids;
24. Notes that SMEs have struggled to gain access to public procurement markets and that more should be done to develop an 'SME strategy'; calls, therefore, as part of this strategy, on the Member States to work with contracting authorities to encourage sub-contracting opportunities where appropriate, to develop and disseminate best-practice techniques, to avoid overly prescriptive pre-qualifying processes, to use standards in tender documents to ensure that suppliers do not have to start from scratch, and to establish a centralised advertising portal for contracts; also calls on the Commission to take stock of Member States' initiatives in this area and to encourage wider dissemination of the Small Business Act's European Code of Best Practices;
25. Encourages Member States to promote a 'supplier development programme', as already developed in some countries; notes that such a tool can be used to encourage dialogue between suppliers and procurers, enabling actors to meet at an early stage of a purchasing process; stresses that such a mechanism is essential for stimulating innovation and improving SMEs' access to procurement markets;
26. Urges the Commission to do more to secure a greater role for European SMEs in international public procurement and to intensify efforts to prevent discrimination

against European SMEs by matching the specific provisions applied by some parties to the GPA (such as Canada and the USA); notes that measures to improve both transparency and access to national procurement markets would help SMEs to gain access to such markets;

27. Calls on the Commission to secure the inclusion, in the renegotiated WTO Government Procurement Agreement (GPA), of a clause enabling the European Union to give preference to SMEs when awarding public contracts, along the lines of those already applied by other States Parties to this agreement;

### ***Green procurement***

28. Draws attention to the great importance of public procurement for climate and environmental protection, energy efficiency, innovation and stimulating competition, and reiterates that public authorities should be encouraged and empowered to base public procurement on environmental, social and other criteria; welcomes the practical assistance given to public authorities and other public bodies in connection with sustainable procurement; calls on the Commission to explore the possibility of using green public contracts as a tool to promote sustainable development;
29. Reiterates its previous call, in its report of February 2009, for the Commission to produce a handbook on pre-commercial procurement, which should illustrate practical examples of risk-benefit sharing according to market conditions; takes the view, in addition, that intellectual property rights must be vested in the companies participating in pre-commercial procurement, which would foster understanding amongst public authorities and encourage suppliers to become involved in pre-commercial procurement procedures;
30. Welcomes the establishment of the European Commission's EMAS helpdesk, which provides practical information and support to help companies and other organisations evaluate, report on and improve their environmental performance in the context of public procurement; calls on the Commission to consider developing a more generic online portal which could offer practical advice and support for those using the public procurement process, particularly the actors involved in complex and collaborative procurement procedures;

### ***Socially responsible procurement***

31. Emphasises the lack of clarity in the area of socially responsible public procurement, and calls on the Commission to provide assistance in the form of manuals; draws attention, in this connection, to the changes in the legal framework brought about by the Lisbon Treaty and the Charter of Fundamental Rights, and looks to the Commission to implement the relevant provisions in an appropriate manner; emphasises the underlying problem that social criteria relate to the manufacturing process, so that their impact is generally indiscernible in the final product, and that globalised production systems and complex supply chains make compliance with the criteria difficult to monitor; expects, therefore, precise, verifiable criteria and a database containing product-specific criteria to be developed for the area of socially responsible public procurement as well; draws attention to the problems faced by contracting authorities, and the costs they incur, in

- verifying compliance with such criteria, and calls on the Commission to offer suitable assistance and to promote instruments which can be used to certify the reliability of supply chains;
32. Calls on the Commission to make it clear that public authorities may base public procurement on social criteria such as the payment of relevant standard wages and other requirements; calls on the Commission to devise guidelines or other practical assistance for public authorities and other public bodies in connection with sustainable procurement, and urges the Commission and the Member States to organise frequent training courses and campaigns to raise awareness of this issue; supports the idea of a transparent process, involving the Member States and local authorities, with a view to developing the relevant criteria further; points out that, in the area of social criteria in particular, such a process offers good prospects for improvements;
  33. Calls on the Commission to encourage public authorities to use fair trade criteria in their public tenders and purchasing policies on the basis of the definition of fair trade set out in the European Parliament resolution of 6 July 2006 on fair trade and development and the recent Commission communication of 5 May 2009; reiterates its earlier call for the Commission to promote the use of such criteria by, for example, producing constructive guidelines on fair trade procurement; welcomes the unanimous adoption of the opinion of the Committee of the Regions of 11 February 2010 calling for a common European fair trade strategy for local and regional authorities;

***Practical help: database and training courses***

34. Calls for the development of a frequently updated database of standards, especially those relating to environmental and social criteria, to be made available to public authorities, in order to ensure that procurers have access to appropriate guidance and a clear set of rules when drawing up tenders, so that they can easily verify their compliance with the relevant standard; expects the Member States and all stakeholders to be fully involved in this process; notes that this bottom-up process should take into account the valuable experience and knowledge that often exists at local, regional and national level; draws attention, furthermore, to the negative impact which a market fragmented by the existence of numerous different regional, national, European and international labels has on innovation and research;
35. Notes the importance of standards for public procurement in that they can help public procurers meet their targets, allowing them to use tried and tested processes to procure products and services, delivering a more cost-effective tender procedure and ensuring that procurement meets other policy objectives such as sustainability or buying from small businesses;
37. Recognises that training and exchanges of experience between public authorities and the Commission are essential in order to overcome some of the complexities of the public procurement market; is concerned, however, that as public budgets tighten, such initiatives may be undermined; calls, therefore, on the Member States and the Commission to use the existing resources and mechanisms at their disposal, such as the

peer reviews envisaged in the Services Directive, to encourage small teams of procurement experts from one region to review the activities of another EU region, which may help to build confidence and establish best practices across different Member States;

36. Urges the Commission and the Member States to organise training courses and campaigns to raise awareness among local authorities and policy-makers, and to include other stakeholders, in particular providers of social services;

### ***Regional development***

38. Stresses that the Court of Auditors regularly indicates in its annual reports on the implementation of the EU budget, as well as in its latest annual report on the 2008 financial year, that failure to comply with EU procurement rules is one of the two most common causes of errors and irregularities in the implementation of European projects co-financed by the Structural Funds and the Cohesion Fund; emphasises, in this context, that irregularities are often caused by improper transposition of EU rules and by differences in the rules applied by Member States; calls on the Commission and the Member States to revise, in cooperation with regional and local authorities, the various sets of rules applicable to public procurement in order to unify them and simplify the whole legal framework for public procurement, in particular with a view to reducing the risk of errors and ensuring more efficient use of the Structural Funds;
39. Takes the view that it is not only costs and complexity which can be prohibitive, but also the time needed to complete the public procurement process, along with the threat of legal action in the form of lengthy appeal procedures that are often obstructed by various actors, and hence welcomes the fact that the recovery plan makes it possible to apply accelerated versions of the procedures outlined in the public procurement directives to major public projects specifically in 2009 and 2010; calls on the Member States to make use of the procedure and to assist local and regional authorities in implementing and using these procedures, in each case in compliance with the standard public procurement rules and regulations;
40. Calls on the Commission to consider the possibility of continuing to use accelerated procedures in connection with the Structural Funds, even beyond 2010, and extending the temporary threshold increase, with the specific aim of speeding up investment;

***International trade***<sup>41</sup>. Points out that the internal market and international markets are increasingly interlinked; takes the view, in this context, that the EU internal market legislators and EU negotiators in the field of international trade should be mindful of the possible consequences for one another when conducting their activities, and that they should adopt a coherent policy that is always directed to the promotion of EU values in procurement policies, including transparency, a principled stance against corruption and the advancement of social and human rights; invites the Committee on the Internal Market and Consumer Protection and the Committee on International Trade to hold joint briefing sessions in order to foster synergies;

42. Stresses that a sound government procurement framework is a precondition for a fair and free competition-oriented market, and helps to fight corruption;
43. Further points out, in the context of the European Union's commitments in the field of international public procurement, the importance of strengthening anti-corruption mechanisms in this area, and draws attention to the need to focus efforts on ensuring transparency and fairness in the use of public funds;
44. Urges the 22 observer states on the GPA committee to speed up the process of acceding to the GPA;
45. Calls on the Commission to evaluate the possibility of incorporating into public procurement agreements with international partners provisions requiring compliance with the fundamental human rights obligations laid down in conventions and international agreements;
46. While arguing strongly against protectionist measures in the field of public procurement at global level, firmly believes in the principle of reciprocity and proportionality in that area; calls on the Commission to consider imposing proportional targeted restrictions on access to parts of the EU's procurement markets for those trading partners which benefit from the openness of the EU market, but have not shown any intention of opening up their own markets to EU companies, in order to encourage our partners to offer reciprocal and proportional market access arrangements for European companies;
47. Draws attention to the provisions of Articles 58 and 59 of Directive 2004/17/EC; calls on the Member States to make full use of the possibility of informing the Commission of problems relating to access by their undertakings to third-country markets, and calls on the Commission to take effective measures to ensure that EU undertakings enjoy genuine access to third-country markets;
48. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

Total annual expenditure on the public procurement of goods and services in the European Union amounts to EUR 1500 billion, or more than 16% of EU GDP<sup>1</sup>. International public procurement accounts for a mere 3% of that figure, however. The main purpose of public procurement is the cost-effective purchase of goods and services with a view to the performance of public-service tasks.

Public authorities are not typical market participants, however; since they manage public funds they bear a particular responsibility. Wherever possible, public procurement should make a contribution to meeting the major challenges facing society: the global economic and financial crisis, climate change and the ever worsening crisis of poverty in the countries of the South.

There is no doubt that public contracting authorities are benefiting from the European internal market and its rules: larger markets create more choice, which can lead to lower costs and better quality; greater transparency helps to fight corruption and fraud; cross-border cooperation creates new possibilities for action and offers the chance of new experiences. But there are drawbacks as well: in many Member States regional and local authorities are the largest public contracting authorities and, against the background of the current economic crisis, it is precisely their experiences which are highlighting the way the European public procurement directives are reducing the scope for action and making the process of awarding contracts slower and more costly.

Contractors as well, in particular small and medium-sized undertakings, are suffering under the burden of red tape and legal uncertainty. Many studies have been drawn up showing just how costs are increasing and procedures are becoming lengthier, although they cannot be dealt with in detail in this report.

### *Legal uncertainties*

There are various reasons for this development. The aim of the 2004 revision of the public procurement directives was to simplify and modernise the procedures for the award of public contracts and make them more flexible; that aim has not been achieved, however.

On the one hand, some provisions of the directives themselves are not sufficiently clear: political disagreements in the Council and Parliament resulted in compromises on wording, loopholes and inconsistencies in the texts.

On the other, the transposition process in the Member States proved to be a time-consuming one, the transposed versions often contained more stringent provisions, additional criteria were incorporated, whilst some provision designed to increase flexibility were left out: In short, the letter of the law changed during transposition.

Legal uncertainties have led to a plethora of appeal procedures and national and European court cases. Attempts have been made, through the case-law of the CJEU and by means of Commission soft law proposals, to close the legal loopholes, an approach which has merely added to the confusion.

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<sup>1</sup> International Monetary Fund figures for 2006, nominal EU GDP on the basis of the October 2007 exchange rate: US\$ 14 609 840 million, even if a tiny proportion is spent on defence goods.

All this has left us with a complex set of rules which are creating serious legal problems, primarily for smaller local authorities, but also for small and medium-sized undertakings, problems which they can no longer solve without incurring additional costs or seeking external legal advice. Legal uncertainties or the threat of legal action have brought important procurement projects to a halt and there is hardly another area in which so many legal disputes have flared up. The incorrect application of the rules governing procurement is one of the most common causes of errors in the disbursement of resources under the European Structural Funds.

The main areas of legal dispute concern public-public partnerships, town planning (including the construction of social housing) and service concessions. However, there is also uncertainty surrounding public-private partnerships, the procurement of fair-trade products, the application of the public procurement directives to contracts whose value falls below the relevant thresholds and the scope for taking account of social criteria, such as equal pay, gender equality, compliance with wage agreements and the provision of jobs for the long-term unemployed and young people with poor skills or qualifications.

### ***Inadequate coordination within the Commission***

There is also a lack of coordination within the Commission. Many Commission departments have ‘discovered’ public procurement as a means of achieving objectives for which the European Union would otherwise lack the financial resources or the legislative competence. It of course makes sense to encourage contracting authorities to engage in ecologically and socially responsible procurement and to foster research and innovation. However, the many initiatives which have resulted do not make for legal clarity and are undermining efforts to achieve what is in itself a worthwhile objective. A plethora of soft law measures has merely added to the legal inconsistencies.

When developing soft law, the Commission should consider whether its proposals are consistent with the proportionality principle and their practical implications at local level. The most recent study produced by the European Institute of Public Administration (EIPA), ‘The Institutional Impacts of EU Legislation on Local and Regional Governments, A Case Study of the 1999/31/EC Landfill Waste and 2004/18/EC Public Procurement Directives’, criticises the extensive use of soft law: ‘using soft law to regulate very important aspects of the Directive is another important shortcoming: it is not possible to foresee the institutional impact of soft law’. In keeping with the aims of the Better Lawmaking initiative, the impact of soft law should also be studied and the issue of compliance with the subsidiarity and proportionality principles reviewed (shortened impact assessment).

Unfortunately there has thus far been a lack of political balance to the Commission’s implementation of European public procurement law. Whilst many initiatives have been taken and many manuals and guidelines are available in the area of ecologically responsible and energy-efficient procurement, the Commission’s most recent communication on socially responsible procurement dates back to 2000, i.e. prior to the revision of the public procurement directives. In the legally particularly complex field of fair trade procurement, only one communication has thus far been issued, and no guidelines or manuals. This could be misconstrued as an indirect reflection of the Commission’s priorities.

Your rapporteur is therefore calling for better coordination of public procurement policy among the various Commission departments involved and the development of a joint, public strategy on public procurement, including a uniform web presence, with a view to making the law more transparent.

More initiatives would also be welcome in the areas of the organisation of exchanges of



experience, the development of proven practices and methods and support for training courses in the Member States. Moreover, such training courses should not be aimed solely at local contracting authorities, but should also encompass political decision-makers and other individuals and bodies, in particular NGOs, which provide social services. Here, the experience gained with this model in France, where it is currently being tested, could prove instructive.

The report also criticises the lack of transparency regarding the composition and results of the work of the internal Commission advisory committee on public procurement and calls on the Commission to take steps to ensure that both this committee and the planned new committee on public-private partnerships have a balanced composition and work in a transparent manner;

***Legal clarification by the CJEU of the situation regarding public-public partnerships***

The entry into force of the Lisbon Treaty has changed the legal position, above all by strengthening the role of local and regional authorities. For the first time an acknowledgment of the ‘right to regional and local self-government’ has been incorporated into European Union primary law (Article 4(2) TEU):

*‘The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government’.*

Article 1 of the new Protocol on services of general interest (No 26) likewise emphasises the following:

*‘the essential role and the wide discretion of national regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users’.*

In a number of judgments handed down prior to the entry into force of the new Treaty the CJEU had invoked the right to local self-government and made it clear that the ‘possibility for public authorities to use their own resources to perform the public-interest tasks conferred on them may be exercised in cooperation with other public authorities’ (Case C-480/06, *Stadtwerke Hamburg*). In this way the CJEU has confirmed local authorities’ margin for discretion and strengthened local self-government. However, the judgments do not constitute a blank cheque justifying all forms of cooperation between local authorities. The CJEU regards public-public partnerships, such as cooperation agreements between local authorities and national cooperation, as falling outside the scope of the public procurement directives if they meet the following criteria:

1. the purpose of the partnership is the joint provision of a public-service task conferred on all local authorities,
2. the task is carried out solely by public authorities, i.e. without the involvement of private individuals or undertakings,
3. and the activity involved is essentially performed on behalf of the public authorities concerned.

The CJEU has also confirmed that the mere possibility of a public-public partnership being opened up to private investors does not invalidate the exclusion of such partnerships from the scope of the public procurement directives if there is no real prospect of such a step being

taken at the time when the contract is awarded.

A controversial area of public procurement law has thus been adequately clarified. One consequence of this ruling must be that the Commission refrains from bringing Treaty infringement proceedings against Member States in this area and, together with Parliament and stakeholders, begins the work of consolidating the CJEU case-law. This report is intended as the first contribution to that process.

#### ***Clarification of the legal situation regarding service concessions***

The revised public procurement directives take the new step of defining service concessions as contracts in connection with which ‘the consideration for the provision of services consists either solely in the right to exploit the work or in this right together with payment’. The Community legislator explicitly excluded service concessions from the scope of the directives, with a view to offering contracting authorities and contractors a greater degree of flexibility and to taking account of the differing legal cultures and traditions in the Member States, an approach confirmed by the CJEU in its recent judgment of 10 September 2009 in Case C-206/08, *Eurawasser*. Service concessions are not covered by the public procurement directives, but only by the less stringent regime of the EU Treaties. In that judgment, the CJEU also defined the criterion of transfer of economic risk more precisely. In its view, the right to award a service concession for water supply services is not invalidated by the fact that supply contracts are governed by by-laws stipulating compulsory connection and compulsory use of the service. The economic risk justifying the conclusion of a service concession may also be limited. The CJEU has confirmed that it must remain open to public contracting authorities to ensure the provision of services by way of a concession if they consider that to be the best method of ensuring the public service in question. In so doing it has clarified the situation in another area which frequently gives rise to legal disputes.

#### ***Clarification of the situation regarding public-private partnerships***

The Commission and the CJEU have clarified the situation in other areas as well. Both the Commission, in its 2008 communication on public-private partnerships, and the CJEU, in its judgment of 15 October 2009 in Case C-196/08, *Acoset*, have made it clear that no double competitive tendering procedure is required in connection with the award of contracts to and the conferral of certain tasks on newly-established public-private partnerships, but that all the following criteria must be met before a concession can be awarded without competitive tendering to a mixed public-private undertaking specially established for that purpose:

- The private participant must be selected by means of a public procedure, following a review of the financial, technical, operational and administrative requirements and the characteristics of the tender in the light of the particular service to be provided.
- The mixed public-private undertaking must retain the same corporate purpose throughout the duration of the concession. According to the CJEU, any material change to that corporate purpose or to the task to be performed would necessitate the launching of a new competitive tendering procedure.

The legal situation regarding public-private partnerships is thus also sufficiently clear.

#### ***Town planning***

This is not the case in all areas, however. The area of town planning is particularly problematical at the moment: an unwarrantedly strict interpretation by German courts in particular of the CJEU judgment in Case C-220/05, *Roanne*, has served to extend the scope of

the public procurement directives to areas they were never intended to encompass. However, local authorities must be able to sell plots of land subject to conditions (for example, a stipulation that the plots in question should be built on within two years) without being required to open up the procedure to Europe-wide competitive tendering. If not, *‘one may have to accept the hypothesis, however absurd, that all town planning activities are subject to the directive since, by definition, provisions on the possible execution of building works substantially alter the value of the land in question’* (quote from the final submission made to the CJEU by Advocate-General Paolo Mengozzi on 17 November 2009).

The public procurement directives were never intended to cover such cases and it is to be hoped that the CJEU will agree with the Advocate-General.

### ***Sustainable and innovative procurement***

Whilst there are many instruments (the GPP Toolkit, the ‘Procura+Campaign’ or ‘TopTen Pro’) available to help public authorities and other public bodies in the area of ecologically sustainable procurement, and whilst, in the area of innovative procurement, the Commission has issued communications on pre-commercial public procurement and on a lead market initiative for Europe, no such steps have been taken in the area of socially responsible procurement, even though the Lisbon Reform Treaty has confirmed the importance of a social Europe. In particular the new Article 3(3) of the Treaty on European Union and the now legally binding Charter of Fundamental Rights have broadened the European Union’s aims from the purely economic to include binding social objectives. This must also be reflected in the action the Commission takes.

The area of socially responsible procurement in particular suffers from two problems: social criteria chiefly relate to the manufacturing process, so that their impact is generally indiscernible in the final product, and globalised production systems and complex supply chains make compliance with criteria more difficult to monitor. The situation is made even more complex and confusing by the fact that self-issued certificates must be accepted in tendering procedures, in order not to breach the ban on discrimination. Checking the veracity of such certificates is beyond the scope of most public contracting authorities. In addition to drafting a manual, the Commission should therefore also consider developing precise, verifiable criteria and/or developing a database containing product-specific criteria. The establishment of a European body with the task of drawing up and checking compliance with criteria for specific product groups and, if necessary, providing extra-judicial arbitration on complaints should also be considered.

### ***Review of the public procurement directives***

In general it would be welcome if the Commission, when carrying out its proposed review of the public procurement directives, were to take account of the points raised in this report and, at the same time, address the legal and practical shortcomings in the way the directives have been transposed into national law and the legal uncertainties surrounding the application of public procurement law. It would also be useful to clarify where and how the European Union can contribute to administrative simplification in this area, although such a process can only be carried out on the basis of an objective analysis of the existing problems involving all stakeholders - something which is urgently needed.

However, your rapporteur warns against any move to revise the public procurement directives at this juncture - that would be premature for a variety of reasons. Firstly, the directive on review procedures concerning the award of public contracts should certainly be included in any revision, in order to prevent any further fragmentation of public procurement law.

However, that directive has not yet been transposed in all the Member States and its practical impact on public procurement cannot yet be assessed. Secondly, the Member States are currently facing a serious economic and financial crisis whose implications for local authorities are as yet largely unforeseeable and which will certainly worsen over the next few years. Changing the legal basis for public procurement at such a time would only create further uncertainty and lead to delays in tender procedures - to the detriment of all concerned.

24.2.2010

## **OPINION OF THE COMMITTEE ON REGIONAL DEVELOPMENT**

for the Committee on the Internal Market and Consumer Protection

on new developments in public procurement  
(2009/2175(INI))

Rapporteur: Oldřich Vlasák

### **SUGGESTIONS**

The Committee on Regional Development calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Points out that although local and regional authorities are among Europe's largest purchasers and therefore play an essential role in implementing public procurement rules, the complexity of the rules laid down in competition law and procurement law means that there is often a lack of expertise concerning the legal framework and its implementation, appropriate training and guidelines on procurement within sub-national authorities; calls on the Member States to set up training courses on public procurement rules (including specific aspects, such as social, environmental, diversity and equality criteria) and to encourage the use of ICTs to improve the understanding of those rules and the administrative capabilities of local and regional authorities; in this context, raises the possibility of establishing public procurement groupings at regional level based on cooperation between local and regional authorities, which would significantly improve the efficiency and effectiveness of public procurement through contacts and mutual exchanges of experience and information; furthermore, points out that efforts to uncover and reduce corruption at regional and local authority level must continue through the introduction of training, the provision of information and publicity;
2. Stresses that the Court of Auditors regularly indicates in its annual reports on the implementation of the EU budget, as well as in the latest Annual Report on the financial year 2008, that failure to comply with EU procurement rules is one of the two most common causes of errors and irregularities in the implementation of European projects co-

financed by the Structural Funds and the Cohesion Fund; highlights, in this context, that irregularities are often caused by improper transposition of EU rules and by differences in the rules applied by Member States; calls on the Commission and the Member States to revise, in cooperation with regional and local authorities, the various sets of rules applicable to public procurement in order to unify those rules and simplify the whole legal framework for public procurement, in particular with a view to reducing the risk of errors and increasing efficiency in the use of Structural Funds;

3. Considers that it is not only costs and complexity which can be prohibitive, but also the time needed to complete the public procurement process, and the threat of legal action in the form of lengthy appeal procedures that are often obstructed by various actors, and hence welcomes the fact that the recovery plan makes it possible to apply accelerated versions of the procedures outlined in the public procurement directives to major public projects specifically in 2009 and 2010; calls on the Member States to make use of the procedure and assist local and regional authorities in implementing and using these procedures, in each case in compliance with the standard public procurement rules and regulations;
4. Calls on the Commission to examine the possibility of using, even beyond 2010, accelerated versions of procedures in connection with the Structural Funds and an extension of the temporary increase in thresholds, with the specific aim of speeding up investment;
5. Deplores the fact that in some cases Structural Fund allocations for infrastructure projects undertaken in the context of a Public Private Partnership (PPP) and related contracts with private operators based on public procurement carried out at sub-national level have, as a result of very complex procurement procedures, led to a loss of European Union subsidies previously available to fund infrastructure development; believes that it is vital to remove obstacles to PPPs if the European Union wants to have any chance of making the necessary investments in infrastructure and quality services; calls on the Commission to ensure that public procurement and Structural Fund implementation rules set a coherent framework for PPPs in order to create legal certainty for all stakeholders and reduce the pressure on public budgets, in the context of the principle of co-financing and in the aftermath of the global economic crisis;
6. Recognises the right of local and regional authorities to decide democratically on the best means of delivering public services, including decisions to use companies they own or control without any private partner being involved; believes that even without compulsory tendering inter-communal or other forms of public-public cooperation for service delivery should be accepted as a legitimate way of delivering services and that sub-national actors should be able to assign tasks relating to public service provision to companies they own or control;;
7. Points out that the Commission's initiatives concerning public procurement need to be better coordinated in order to avoid jeopardising coherence with the European directives on

public procurement and causing legal problems for operators; calls in this regard for better coordination within the Commission, including a single website with clear structures to promote legislative transparency in this field;

8. Underlines the need to encourage SMEs to participate in public procurement procedures carried out by local and regional authorities, in accordance with the EU's general objectives in support of SMEs; points out that increased involvement of SMEs can be ensured through the proper provision of information, consultancy and training courses and practical assistance ;
9. Endorses the concerns voiced by many local authorities in response to the interpretation of the rulings<sup>1</sup> of the Court of Justice in the field of urban development; firmly believes that the operationally and legally strict application of public procurement rules might hinder urban development; calls on the Commission to draw up, in close cooperation with Parliament, the Council and regional and local authorities, the corresponding public procurement rules with sufficient clarity to enable contracting authorities clearly to identify which public works contracts and concessions are subject to the procurement rules and thus distinguish between such contracts and concessions and urban development projects which are not subject to those rules, so that land agreements can be facilitated between the public and private sector without the unnecessary requirement of having to issue a call for tenders and without jeopardising the powers and right of local authorities to decide how they want to develop their territory; awaits with great interest the judgment of the Court of Justice in Case C-451/08; endorses the view of the Advocate-General of the Court of Justice delivered on 17 November 2009 in Case C-451/08: 'These broad and ambitious aims must be borne in mind when interpreting the Directive but it should not be assumed that, by appealing to the purpose of the measure, its scope can be extended indefinitely.' (paragraph 35); otherwise there is the risk 'that all town planning activities are subject to the Directive since, by definition, provisions on the possible execution of building works substantially alter the value of the land in question'.

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<sup>1</sup> Judgment of the European Court of Justice (First Chamber) of 18 January 2007 in Case C-220/05 Jean Auroux and Others v Commune de Roanne.

## RESULT OF FINAL VOTE IN COMMITTEE

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|---|---|
| <b>Date adopted</b>                             | 22.2.2010   |
| <b>Result of final vote</b>                     | +: 39<br>-: 1<br>0: 0   |
| <b>Members present for the final vote</b>       | François Alfonsi, Luís Paulo Alves, Charalampos Angourakis, Catherine Bearder, Jean-Paul Basset, Sophie Briard Auconie, Zuzana Brzobohatá, Alain Cadec, Ricardo Cortés Lastra, Tamás Deutsch, Rosa Estaràs Ferragut, Seán Kelly, Evgeni Kirilov, Constanze Angela Krehl, Petru Constantin Luhan, Elżbieta Katarzyna Łukacijewska, Ramona Nicole Mănescu, Iosif Matula, Miroslav Mikolášik, Franz Obermayr, Jan Olbrycht, Wojciech Michał Olejniczak, Markus Pieper, Georgios Stavrakakis, Nuno Teixeira, Michael Theurer, Michail Tremopoulos, Viktor Uspaskich, Lambert van Nistelrooij, Oldřich Vlasák, Kerstin Westphal, Hermann Winkler, Joachim Zeller |
| <b>Substitute(s) present for the final vote</b> | Vasilica Viorica Dăncilă, Karin Kadenbach, Heide Rühle, Peter Simon, László Surján, Evžen Tošenovský, Sabine Verheyen   |



2.3.2010

## **OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

for the Committee on the Internal Market and Consumer Protection

on new developments in public procurement  
(2009/2175(INI))

Rapporteur: Małgorzata Handzlik

### **SUGGESTIONS**

The Committee on International Trade calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Points out that the Internal Market and international markets are increasingly interlinked; considers, in this context, that the EU Internal Market legislators and the EU negotiators in the field of international trade should be mindful of the possible mutual consequences when conducting their activities and that they should adopt a coherent policy that should always be oriented at the promotion of EU values in procurement policies, such as transparency, a principled stance against corruption and the advancement of social and human rights; in order to foster synergies invites the Committee on the Internal Market and Consumer Protection, the Committee on International Trade to hold joint briefing sessions;
2. Stresses that a sound government procurement framework is a precondition for a fair and free competition-oriented market and helps to fight corruption;
3. Believes that a plurilateral agreement such as the Government Procurement Agreement (GPA) is the best tool to ensure a level playing field for European enterprises in regarding market access to public procurement at international level; therefore urges the Commission to conclude the negotiations on the provisional text that was agreed upon in 2006 as a revised version of the GPA that entered into force in 1996 and urges the Commission to continue its efforts to conclude the ambitious GPA; points out that in its preamble and in its Article V the GPA recognises Special and Differential Treatment for Developing Countries;

4. Urges the 22 observer states on the GPA committee to speed up the process of acceding to the GPA;
5. Takes the view that the EU public procurement market remains the most open public procurement market at global level;
6. Regrets that our international partners have not yet opened up their internal public procurement markets to EU companies in the same way that the EU internal market is open to third-country enterprises; deeply deplores the fact that our major trading partners employ public procurement practices which discriminate against EU suppliers tendering for public contracts in third countries; deplores the fact that some key trading partners (including GPA members) take protectionist measures in the area of public procurement;
7. Urges the Commission to do more to secure a greater role for European SMEs in international public procurement and to intensify efforts to prevent discrimination against European SMEs by matching the specific provisions that some GPA members (such as Canada and the US) have; notes that measures to improve both transparency and access to national procurement markets would help SMEs to access such markets;
8. While arguing strongly against protectionist measures in the field of public procurement at global level, firmly believes in the principle of reciprocity and proportionality in that field; calls on the Commission to consider imposing proportional targeted restrictions on access to parts of the EU's procurement markets for those trading partners which benefit from the openness of the EU market, but have not shown the intention of opening up their own markets to EU companies, in order to encourage our partners to offer reciprocal and proportional market access arrangements for European companies;
9. Draws attention to the provisions of Articles 58 and 59 of Directive 2004/17/EC; calls on the Member States to make full use of the possibility of informing the Commission of problems concerning access by their undertakings to third country markets and calls on the Commission to take effective measures to ensure that Union undertakings enjoy genuine access to third country markets;
10. Calls on the Commission to secure the inclusion, in the renegotiated WTO Government Procurement Agreement (GPA), of a clause enabling the European Union to give preference to SMEs when awarding public contracts, along the lines of those already applied by other States parties to this agreement;
11. In the context of the European Union's commitments in the field of international public procurement, points out, further, the importance of strengthening anti-corruption mechanisms in the field of public procurement and draws attention to the need to focus efforts on ensuring transparency and fairness in the use of public funds;
12. Calls on the Commission to evaluate the possibility of using green public procurement as an instrument for promoting sustainable development;
13. Calls on the Commission to evaluate the possibility of incorporating into public procurement agreements with international partners provisions requiring compliance with the fundamental human rights obligations laid down in conventions and international

agreements.

## RESULT OF FINAL VOTE IN COMMITTEE

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| <b>Date adopted</b>   | 23.2.2010  |
| <b>Result of final vote</b>                                       | +: 16<br>-: 5<br>0: 5  |
| <b>Members present for the final vote</b>                         | William (The Earl of) Dartmouth, Daniel Caspary, Christofer Fjellner, Joe Higgins, Yannick Jadot, David Martin, Emilio Menéndez del Valle, Vital Moreira, Cristiana Muscardini, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Iuliu Winkler, Jan Zahradil, Paweł Zalewski |
| <b>Substitute(s) present for the final vote</b>                   | Catherine Bearder, José Bové, George Sabin Cutaş, Mário David, Salvatore Iacolino, Syed Kamall, Elisabeth Köstinger, Jörg Leichtfried, Matteo Salvini, Michael Theurer, Jarosław Leszek Wałęsa   |
| <b>Substitute(s) under Rule 187(2) present for the final vote</b> | Patrice Tirolien   |

## RESULT OF FINAL VOTE IN COMMITTEE

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|---|---|
| <b>Date adopted</b>   | 28.4.2010   |
| <b>Result of final vote</b>                                       | +: 28<br>-: 0<br>0: 8   |
| <b>Members present for the final vote</b>                         | Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Louis Grech, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Alan Kelly, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Andreas Schwab, Róza Gräfin Von Thun Und Hohenstein, Kyriacos Triantaphyllides, Bernadette Vergnaud, Barbara Weiler |
| <b>Substitute(s) present for the final vote</b>                   | Pascal Canfin, Cornelis de Jong, Frank Engel, Anna Hedh, Othmar Karas, Emma McClarkin, Catherine Soullie, Anja Weisgerber, Kerstin Westphal   |
| <b>Substitute(s) under Rule 187(2) present for the final vote</b> | Edward Scicluna   |